IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 117 of 1983

Date of decision: 17-8-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MANEKBEN WD/O CHUNILAL SHAH

Versus

ASSISTANT COLLECTOR

Appearance:

Mr. Vimal Patel for Appellants

Mr. C.C. Bhalja, AGP, for Respondent No. 1

MR AKSHAY H MEHTA for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 17/08/98

ORAL JUDGEMENT

This appeal is directed against the judgment and award of the District Judge, Bharuch, dated 31st March, 1982 in Land Acquisition Reference No.156 of 1979, under which the reference court has awarded additional compensation of Rs.6,931.35 ps. to the appellant with proportionate cost thereon and interest at the rate of 4-1/2 % per annum on the additional amount of compensation awarded from 1-8-1979 till the date of realisation.

2. The property in dispute, which has been acquired under the provisions of the Land Acquisition Act, 1894 by the respondents consisted of one storeyed building constructed on plot of land bearing Survey No.22/B, Sheet No.18, admeasuring 68 sq.yards and 2 sq.ft. equivalent to 57-04-27 sq.mts. The original survey No.22 which admeasured about 1020 sq.ft. belonged to one Hayat Chhitu. That land was acquired on payment of compensation by the then Rajpipla State for constructing road going from Station Road to Police Station. On 25th September, 1939 the husband of claimant No.1 and father of claimants No.2 and 3 - appellants in this appeal made application to the Rajpipla State, requesting to sell this land to him as it is abutting to his house. Ultimately by Hazur Order No.2026-40:41 dated 25th February, 1941 the Rajpipla State had agreed to sell that land to the predecessor in title of the appellant at the rate of Annas 8 per sq.ft. on condition that whenever the State required that land for constructing a road or for anyother purpose, he should hand over vacant possession of that land after removing the superstructures, if any, on payment of said price and would not be entitled to get any compensation for the superstructures. This land was purchased by the predecessor in title of the appellant subject to the aforesaid condition. On partition of the family property this part of the land, which is in dispute, fell in the share of the predecessor in title of the appellant. Rajpipla Municipality needed this land for constructionof road. It first filed suit against Chunilal Amarji in the court of Civil Judge, Junior Division, Rajpipla, being Regular Civil Sit No.209of 1972 for getting vacant and peaceful possession of the suit land, but later on it has requested the State Government to acquire this land for construction of road. Accordingly notice under section 4

of the Land Acquisition Act,1894 was published on 21st March, 1973. After considering the objections received, section 6 notification was published on 29th April, 1976. The Assistant Collector, Rajpipla, as Land Acquisition Officer, awarded compensation for acquisition of the land as under:

Rs.3,542-50 ps. for land
Rs.3,930-00 ps. for structures.
Rs.1,120-00 ps. solatium.

Rs.8,593-85 ps. Total
---

3. Dissatisfied by the award of the Land Acquisition Officer, the appellant made request to the Land Acquisition Officer for making reference, and accordingly reference was made. In the reference the appellant made claim of additional compensation of Rs.25,827.50 ps. and solatium thereon at 15 pr cent and also interest at 4% per annum on the additional amount of compensation. Before the reference Court both the parties produced sale instances of lands of nearby area. The appellant produced, in addition to the sale instances, valuation report of the property prepared by the Architect. However, the learned reference court has not relied on the sale instances produced by both the parties. However, it has determined the amount of compensation to be paid to the appellant, adopting capitalisation method. The reference Court has considered that by following this method of capitalisation the appellants were entitled to Rs.27,000/- as compensation. However, this valuation was taken to be without there being any clog on the right of the appellant,but as there was clog attached to this property, i.e. the Government was entitled to take this property by paying the purchase cost of the property, at which the predecessor in title had purchased the same, 50% of the amount was deducted and the total amount of compensation payable to the appellant was taken at Rs.13,500/-, on which solatium at the rate of 15% has been awarded. Thus the total compensation was worked out at Rs.15,525/-, and after deducting therefrom the amount of compensation already awarded, additional compensation of Rs.6,931.35 ps. has been awarded. Hence this appeal.

4. Learned counsel for the appellant contended that the reference court has committed serious illegality in deducting 50% of the amount of compensation payable to the appellant- claimant on the ground of clog on the right of the appellant. Carrying this contention further the learned counsel for the appellant contended that this

clog is of the year 1941 and it could not have been given effect to after so many years. It has next been contended that even if sale instances were not taken into consideration, valuation report of the property as prepared by the architect should have been taken into consideration and accordingly the amount of compensation should have been determined. On the other hand the counsel for the respondent contended that it cannot be said that the appellant would have got the price of land as it had been determined by the reference court. In view of the clog and the fact that this land is acquired for construction of road, reference court has not committed any illegality in deducting 50% of the amount of compensation as found payable to the appellant. Lastly the learned counsel for respondent No.2 contended that the Hon'ble Supreme Court has laid down that while determining the value of the property compulsorily acquired for a publilc purpose due weightage has to be given to the clog put on the right of the owner on the land for its transfer.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In the facts of the case I do not find any illegality in the judgment of the reference court in adopting capitalisation method to determine what should be the just, adequate and reasonable amount of compensation to be awarded to the claimant for acquisition of the land. By adopting that method the reference Court has taken the monthly income at Rs.150/- and multiplier of 15 years has been adopted. If we go by the valuation report of the architect I find that he has taken monthly income of this property at Rs.166.24 ps. and he has adopted the multiplier of 8. On these two figures of monthly income there is no vast difference between the amount determined by the court and what is found by the architect. Otherwise also, there is reasonable variation in between the amount as arrived at between the architect and the reference court. Taking into consideration the aforesaid facts, the figure as determined by the reference court should have been given effect to. The main grievance of the learned counsel for the appellant is to that part of the award of the reference Court where 50% of the amount determined as compensation has been deducted for the clog on the right of the owner of the property on transfer of this property. Learned counsel for the appellant contended that this 50%, should not have been deducted for the reason that this clog is of the year 1941 and it is towards the higher side. So far as the first contention is concerned I do not find any force therein. This property was given to the predecessor in title of

the appellant, subject to the covenants and conditions with the property, and merely because it is of the year 1941 it cannot be taken that at later point of time it cannot be given effect to. Learned counsel for the appellant is unable to show any provision from the Constitution of India or any other document or resolution of the Government where under this covenants with which the property was given to the predecessor in title of the appellant ceased to have any force or effect. The second contention is also equally devoid of any substance. The figure of 50% taken by the reference court is not without any significance or without any basis. It cannot be said to be arbitrary for the obvious reason that in case that covenant would have been strictly applied then the appellant could not have for this property this value as determined by the reference court. But otherwise also, merely on this point interference is not called for. On the basis of the given fact,even if there is possibility of the court taking a figure less than 50% , still I do not find it to be proper where this court should interfere with the award of the reference court. There cannot be any fixed scale or method on the basis of which this figure can be arrived at. In determining this figure some time some guess work has to be adopted and some time there maybe some arbitrariness, but still where the appellate court considers that this figure could have been reached, it may not be interfered with.

6. Learned counsel for the appellant does not dispute that while determining the amount of compensation to be paid for compulsory acquisition of the property, covenants putting restriction to the right of the owners for transfer of the property has to be given weightage. No interference is called for in this appeal.

7. In the result this appeal fails and the same is dismissed.

....